

STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Gallery, LLC)	
	Map 034-03-0, Parcel 121.00)	Davidson County
	Commercial Property)	
	Tax Years 2006 & 2007)	

INITIAL DECISION AND ORDER

Statement of the Case

Appeals were filed on behalf of the property owner with the State Board of Equalization on September 27, 2006 for the 2006 tax year and on September 26, 2007 for the 2007 tax year. The subject property is presently valued as follows, for both tax years:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,931,400	\$4,265,800	\$6,197,200	\$2,478,880

These matters were reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on September 20, 2007¹, at the Davidson County Property Assessor's Office. Present at the hearing were registered agent M. Davis Gravely, the taxpayer's representative; Mr. Dean Lewis, CAE and Mr. Derrick T. Hammond, TMA, both from the Davidson County Assessor's Office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property consists of a commercial tract of property, a shopping center commonly known as the "Gallery at Rivergate", it has 80,587 square feet and is located on Gallatin Pike in Nashville, Davidson County, Tennessee.

Mr. Gravely contends that this shopping center suffers from an economically depressed real estate market and is physically located so that prospective patrons of the shops would have a hard time finding the stores. He contends therefore, that the property is worth \$5,934,500 for tax year 2006 and \$5,210,500 for tax year 2007. He also contends that the shopping center has "no anchor store for this center". Mr. Gravely based his values on his analysis of data using the income approach and his determination of market rent for the area. Mr. Gravely contends that, because the property is 20 years old, no cost approach was considered. The sales comparison approach was not considered because, in his opinion, there were no viable sales because of the market.

¹ Mr. Gravely stated that he wanted the Initial Decision and Order to cover both tax years and the County agreed.

Mr. Gravely produced a multi-paged exhibit that included not only the income analysis, market and actual rent rolls, but also the income and expense statements for the property. In response to a question by Mr. Lewis, Mr. Gravely admitted that his fee is directly related to the outcome of the hearing. In light of this, Mr. Lewis believes Mr. Gravely's statements should, therefore, be considered unreliable and disregarded.²

Mr. Gravely persistently argued that the market rent derived from his analysis of National Publications³ should be used, rather than the actual rents of the property, which he would consider "excess rents". Mr. Gravely stated, in essence, that prior administrative judges have always used market rents rather than actual rents. Based on his analysis, the market rent should be \$11.00 per square foot.

The assessor contends that the property should be valued at \$6,920,800. Mr. Hammond's multi-paged exhibit used the sales comparison approach and the income capitalization approach, since this is primarily income-producing commercial property. Mr. Hammond developed his income approach by using the actual contract rents for the property, as well retail market publications containing local information⁴.

There are generally three standard customary approaches to value: (1) sales comparison approach; (2) cost approach; and (3) the income capitalization approach.

The germane issue is the fair market value of the property as of January 1, 2006 and as of January 1, 2007. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values"

In *Gap, Inc. (Sumner Co., Tax Year 2006)*, Administrative Judge Mark Minsky stated the following:

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3)

² See *Gap, Inc.*, IDO, Sumner County, 2006, p.3 where Administrative Judge Mark Minsky held that when a witness presumably has **a direct or indirect financial interest in the outcome of an appeal the testimony can be considered biased**, he further stated, **'the testimony of such a representative or witness lacks probative value and must be rejected in its entirety'**.

³ Dollars and Cents of Shopping Centers published by the International Council of Shopping Centers for 2006.

⁴ *MarketView*, Nashville Retail a publication by CB Richard Ellis second Quarter 2007 and *Retail Market Trends Nashville*, Grubb & Ellis, Property Solution Worldwide, Second Quarter 2006, Institutional Grade vs. NonInstitutional Grad Property Rates by PriceWaterhouseCooper, First quarter 2006.

the relevance of each approach to the subject of the appraisal. Id. at 597-603.

The value to be determined in the present case is market value. A generally accepted definition **of market value for ad valorem tax purposes** is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. Id. at 2 1-22. (emphasis supplied).

Since the taxpayer is appealing from a determination by the Davidson County Board of Equalization, the burden of proof in this matter falls on the taxpayer. *Big Fork Mining Company v. Tennessee Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981) and Rule 0600-1-.11(1) State Board of Equalization.

In analyzing the evidence presented in this appeal, several issues arise. First, Mr. Gravely believes that prior decisions by previous administrative judges should control the outcome of this case. His arguments that Judge Mark Minsky has held in the past that market rents, rather than actual contract rents, should be used in calculating the value is misleading,⁵ as the cases can be distinguished and are not always consistent.⁶

Mr. Gravely based his "market rent" value on data from the entire United States rental market. The County's figures are not only based on the actual contractual rents (of the 19 leases in effect 13 leases show they are above Mr. Gravely's national figures), but local data, which in this Administrative Judge's opinion is more persuasive.

Mr. Gravely also argues that the value should be reduced because there are no "national anchors for this shopping center/mall." When asked what he considers a "national anchor," he replied, "a national grocery store, clothing store or drug store, etc." The Administrative Judge respectfully disagrees. The anchors for this shopping center/mall are Pier One Imports and Longhorn Steakhouse. Both of these stores in the opinion of the administrative judge, are well known enough in this market to "draw" consumers to the area.

First of all, it should be remembered that each case rises or falls on its own merits based on particular nuances of each property. Not every case will be decided the same way each time. The Assessment Appeals Commission has stated, in its analysis of like issues, in effect, when there is a contest between data from the general industry versus data from local sources in the area, the local data sources should be controlling. Alven Ghertner, et al., (*Spring Haven Apartments*), FDO, Dickson County, 1990.

⁵ See *Seventeenth & Church Developers*, Davidson County, 1993 & 1994 and *Atrium Memorial Ltd, Partnership II*, Hamilton County, 1995.

⁶ *James & Karen Bageman*, Shelby County, 2004.

Additionally, Mr. Hammond ultimately relied on the income approach in reaching his value, but he also, unlike Mr. Gravely, considered the other approaches as well. As has been discussed, to have a proper analysis the other approaches must at least be considered. *Biveks Corp, et al*, (Madison Co., Tax Year 2005). Mr. Gravely argued that the County's analysis on the sales comparison approach is flawed because the properties are too dissimilar. However, that is why it is called "paired data analysis," so that dissimilarities can be accounted for and figures adjusted.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$6,197,200 based upon the presumption of correctness attaching to the decision of the Davidson County Board of Equalization. The Administrative Judge finds that the taxpayer's representative introduced insufficient evidence to substantiate contention of value for either tax year appealed.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2006 and 2007:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,931,400	\$4,265,800	\$6,197,200	\$2,478,880

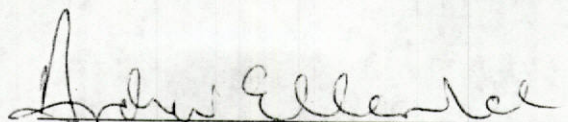
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order. This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 2nd day of November, 2007.


ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. M. Davis Gravely
Jo Ann North, Property Assessor